

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 121 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MADHUBEN W/O SHANABHAI FULABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 121 of 1998
MR KG SHETH for Petitioner
MR D.N. PATEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

Date of decision: 22/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant who was the original accused No.1 challenges her conviction and sentence of life term for the offence under Section 302 of the IPC under the judgement and order dated 3.1.1998 of the learned

Sessions Judge, Panchmahals at Godhra in Sessions Case No. 119 of 1997.

2. According to the prosecution, the appellant was the wife of deceased Shanabhai and she had illicit relations with the original accused No.2 - Govindbhai. As Shanabhai came to know about such relationship, the accused formed a common intention of killing him and in furtherance of such intention, original accused No.2 Govindbhai brought poisonous pesticide and the appellant Madhuben mixed the same in the tea and meals, which she served to her husband Shanabhai on 29.4.1997 in the evening around 9.15 P.M, as a result of which Shanabhai died immediately after taking the food.

3. The trial Court found that it was established from the medical evidence that death of Shanabhai had occurred due to poison. It was also found that the appellant - accused No.1 had, on the day of the incident, mixed poison in the tea and food, which she had served to her husband Shanabhai, which resulted in his death.

4. The record and proceedings have been placed before us and the learned Counsel appearing for the appellant has taken us through all the relevant material having bearing on the case. After the dead body of Shanabhai was buried, it was exhumed and the medical evidence shows that this was done on 22.5.1997 in the presence of Dr. Daswani. The viscera and other parts of the body which were removed for the purpose of investigation were forwarded to the laboratory and it transpired that the death had occurred due to poisoning. The trial Court rightly relying upon the medical evidence and the report of the scientific laboratory, came to the conclusion that the death of Shanabhai was homicidal and it had occurred due to poisoning.

5. The important prosecution witness Lakhabhai Kalabhai in his deposition at Ex.25 has stated that in the evening around 6'0 Clock, he had gone to Shanabhai's place and enquired about him from his wife Madhuben, who told him that Shanabhai had gone to fetch sand. This witness therefore returned to Fulabhai's house, where Shanabhai came around 8'0 Clock and invited him to come to his house. This witness Lakhabhai, Shanabhai and his driver Manabhai had then gone to Shanabhai's house, where Shanabhai told the appellant to prepare tea. The appellant prepared tea and gave it to this witness Lakhabhai and driver Manabhai. He has stated that the appellant had prepared separate tea for her husband Shanabhai and given it to him. Thereafter, this witness

and driver were served meals while Shanabhai went to take his bath. After this witness and the driver had finished their meals, Shanabhai had come after finishing his bath and had started taking his meals. At that time he started smelling his hand and on being asked by this witness as to why was he doing so, Shanabhai told him that some smell was coming from his hand. This witness therefore told him to change the food. The remaining food was thrown to a dog and thereafter, Shanabhai after finishing his meals, sat on a cot, smoked a beedi and went to sleep, saying that he was feeling uneasiness in the stomach. This witness has then stated that after a shortwhile, he had seen froth coming out from the mouth of Shanabhai, with his eyes wide open. This witness therefore sent for Shanabhai's mother, who had come there and tried to talk with Shanabhai, but he did not respond. Thereafter, Shanabhai's father Fulabhai had also come there. Shanabhai's body was thereafter taken to his father's house and Shanabhai's house was locked. This witness has stood the test of cross-examination and has not been shaken at all on the above material part of his evidence, which clearly discloses that the appellant had served tea separately to her husband Shanabhai and had also served meals separately to him. The witness Lakhabhai and driver Manabhai had taken meals at the same time, but nothing had happened to them while Shanabhai who after finishing his bath was separately served the meals by the appellant had complained of odd smell coming from his hand and having finished his meals when he sat on a cot he soon died with froth coming out from his mouth and eyes wide open. It has also come in evidence that the dog that had eaten the left over food which was thrown out had also died. It becomes clear from the evidence that it is not as if by some mistake poison got mixed up with the meals. Lakhabhai and driver Manabhai who had taken the meals at the same time remained hail and hearty while Shanabhai who was served the meals by his wife appellant after he finished his bath, died due to poisoning. This clearly indicates the deliberate design on the part of the appellant of administering poison to her husband Shanabhai by serving him tea and meals separately.

6. Fulabhai - father of Shanabhai, who has deposed at Ex.7 has stated that on 29.4.1997, his son Shanabhai who had taken his tractor for bringing sand, had returned around 6 or 7'0 Clock in the evening. He has stated that at about 9'0 Clock, the appellant had come to his house and told him that something had happened to Shanabhai and that he was lying with his eyes wide open. He therefore went to Shanabhai's house and found him dead. He has

stated that on the same night a dog was also found dead near the house of Shanabhai. He has further stated that on the next day Shanabhai's body was taken for burial as per their custom, but before his last rites could be performed, the appellant had gone away to her parents' place at village Undhra Khandwada. This witness has stated that he had also found that a cat was lying dead in the house of Shanabhai. He has then stated that suspicion had arisen in his mind because the accused No.2 - Govindbhai used to visit Shanabhai's place off and on. The enquiries were therefore made from Govindbhai, who ultimately admitted that he wanted to elope with the appellant and therefore, both had poisoned Shanabhai. He has stated that Govindbhai had admitted in the writing taken on a stamp paper at Ex.11 that he and the appellant had decided to elope and therefore, the appellant had poisoned Shanabhai. It clearly transpires from the deposition of this witness that the appellant had gone away to her parents' house at village Undhra Khandwada even before the burial of Shanabhai could be done. This is an important circumstance which indicates that the appellant having achieved her purpose, wanted to go away from the place where the incident had occurred. If the appellant was not involved in this crime, her normal conduct would have been to remain at the place where husband was lying dead and not to run away to her parents' village even before his burial. The conduct of the appellant leaving the dead body of her husband and going to her parents' village, eloquently speaks of her guilty mind.

7. The appellant's son Jayendra in his deposition at Ex.9 has stated that Govindbhai - the accused No.2, used to visit their house whenever his father Shanabhai used to go out and that Govindbhai would not come to the house if Shanabhai was present. He has also deposed to the effect that Govindbhai used to come to the house even at night. This witness Jayendra, though 12 years of age at the time of his deposition, is found to be a boy having sufficient understanding. His deposition, as rightly held by the trial Court, shows that there were illicit relations between the appellant and the original accused No.2 - Govindbhai. There was therefore a motive for the crime committed by the appellant.

8. The evidence on record therefore, clearly establishes the guilt of the appellant and we are in complete agreement with the reasoning adopted by the trial Court for holding that the appellant had poisoned her husband Shanabhai and committed offence of murder. The appeal is therefore, dismissed.

* /Mohandas